

MINUTES

WARRICK COUNTY AREA PLAN COMMISSION

Regular meeting to be held in Commissioners Meeting Room,
Third Floor, Historic Court House,
Boonville, IN
Monday, May 14, 2018, 6:00 PM

PLEDGE OF ALLEGIANCE: A moment of silence was held followed by the Pledge of Allegiance.

MEMBERS PRESENT: Guy Gentry, President; Bill Byers, Doris Horn, Bob Johnson, Amanda Mosiman and Jeff Willis.

MEMBERS ABSENT: David Hachmeister

Also present were Morrie Doll, Attorney, Sherri Rector, Executive Director, Molly Barnhill, and Kim Kaiser staff.

MINUTES: Upon a motion by Doris Horn and seconded by Jeff Willis the Minutes from the regular meeting held April 9, 2018 were approved as circulated.

The President explained the Rules of Procedure. He added that the Attorney has informed him that there will be some items continued due to street and drainage plans not being in order.

Mrs. Rector stated the subdivision that is on here, The Enclave at Oak Grove PUD, was continued by the Drainage Board and the County Commissioners therefore we cannot act on it as well as the rezoning because the rezoning is a PUD zoning request which requires a plat approval or a development plan. She said since we don't know if it is going to go through...Mr. Bivins is here representing the petitioners...Morrie don't you see it that way as well.

Attorney Doll said yes he does; in fact, he thinks a 30-day continuance and let us follow next month's meeting.

Bill Bivins said that if fine. He said they moved the drainage to 2 weeks from now.

Mrs. Rector said they continued the drainage and the streets for two weeks.

Amanda Mosiman made a motion to continue PC-R-18-07 and PP-18-04 to the June APC meeting. The motion was seconded by Doris Horn and unanimously carried.

Mrs. Rector asked an audience member if they were here to remonstrate.

He said yes he was.

Mrs. Rector said the drainage and streets are going to be on May 29th, it's a Tuesday because that Monday is Memorial Day. She said they will be in this room at 2:30 for drainage and 4:00 for streets. She said on June 11th it will be at 6:00 back here for the plat and if you have anything you would like to email or anything to get to the Board send it to the office and she will get it out to everyone.

REZONING PETITIONS:

PC-R-18-08 – Petition of Jordan & Rachel Baker to rezone 4.50 acres located on the N side of SR 62 approximately 680' E of the intersection of SR 62 and Squaw Creek Rd. from "A" Agriculture to "C-3" Highway Commercial zoning district. Pt of Block 1 & Lot 18 John Bull Addition, Boon Twp. (*Complete legal on file.*)

Jordan Baker was present. He said he was petitioning to be able to build a veterinary clinic down off SR 62.

Chad Wagner was also present.

The President called for a staff report.

Mrs. Rector said we do have all of the return receipts from certified mail except for one from Clyde Lankford but we do have the pay receipt where it was mailed to the correct address and at the proper time. She said as stated this is a request for 4 ½ acres to be rezoned. She said the Comprehensive Plan has no projection for this area and the existing land is vacant. She said the surrounding properties and land use are the properties to the north and east are zoned "A" agricultural and are vacant; the property to the west is zoned "A" agricultural and "C-3" with single family dwellings; the property to the south are zoned "M-1" which has a retail business, "C-3" which are vacant. She said the property has access to Squaw Creek Road and SR 62. She said we have an email from INDOT state the existing entrance will require a permit to upgrade it to commercial. She said the applicant states it is for a vet clinic which would be in compliance with the zoning. She said they are proposing to do a major subdivision plat that will make the proposed rezoning area and lots 19, 20, and 21 of the John Bull Subdivision into one lot to be used for the vet clinic. She added that they are already zoned commercial so that will all be added together when the subdivision is done.

The President called for questions from the Board.

Mrs. Rector asked if this was going to be for larger animals.

Jordan Baker said no this facility will be used for small animals, dogs and cats.

Mrs. Rector asked if this would replace the one on SR 261.

Jordan Baker said yes and the one on SR 261 will be repurposed to large animals.

Ascertaining no questions from the Board and no remonstrators present the President called for a motion.

Amanda Mosiman made to motion to give a positive recommendation for PC-R-18-08 to the County Commissioners. The motion was seconded by Bob Johnson and unanimously carried.

SUBDIVISIONS FOR PRIMARY PLAT APPROVAL:

PP-18-05- Warrick Place IV by RYJO Enterprises, LLC, Ryan Frank, Mng. Mbr. OWNER: 1340 East 9th Street Realty Corp by Charles Pinter, CEO. 7.79 acres being Lot 5 in the Replat of lot 5 & 6 of Warrick Place, located on the N side of SR 66 & W side of Orchard Dr. approximately 200' N & 180' W of the intersection formed by the intersection of SR 66 and Orchard Dr. Ohio Twp. (Advertised in the Standard on May

Becky Kasha was present. She stated she is here on behalf of the sellers of the property, they live in New York so they are not going to be here today.

Tom Keith, Project Engineer was also present.

The President called for a motion.

Mrs. Rector said the property is zoned C-4; there is no flood plain; the number of lots will be 2 with one new lot and the remainder of the existing lot. She said they are requesting no improvements on the streets. She said according to the Comprehensive Zoning Ordinance ARTICLE XXI Sec. 1 (e) *Non Residential lots located within a subdivision plat in a "C-1" Neighborhood Commercial zoning district that do not front and have direct ingress and egress to and from the proposed building site from a dedicated street or right of way maintained by the county or other participating jurisdiction, shall be properly demonstrated to the Commission as to adequate ingress and egress for each use/structure. This must be clearly documented as an egress/ingress easement on the plat. The easement must have only one way in and out and shall not be a connector between two roadways. The easement shall be designed and built to the same stands as a private street as described in the Subdivision Control Ordinance. Said easement shall be given a "street name" for addressing purposes if necessary.* She said as you can see on the plat, it is similar to Boonville Walmart. She said Liberty Boulevard is an easement through there, that is not a county road that runs to the smaller businesses out front and so that is what this will be. She said it will be just through the parking lot and then they have to file a commercial driveway entrance and post surety for the entrance on Orchard Lane. She said the Drainage Board did approve the drainage plans today. She said sewer system on this lot is a private system that was originally approved in the 80's and connects to the Newburgh Public System. She said there is an agreement approved between the owner, Newburgh Sewer, and the APC as a part of this agreement, which our Attorney will explain. She said we do have a letter from Newburgh Sewer that they have the capacity to service the development. She said

Chandler Utility has capacity with lines in place and ready for connection for the water. She said as stated this is a proposed 2 lot subdivision. She said there is a 12' PUE on lot 5B that they are petitioning to vacate. She said the plat is in technical conformity to the Subdivision Ordinance. She said since the APC will be a part of this agreement Morrie should probably explain to them the sewer agreement.

Attorney Doll said it's one of our requirements that you have a letter of connectivity for a public sewer or an approved private septic system in order for a piece of property to be approved for a development. He said that's not possible here because this particular piece of property is served by a private sewer line which does connect to the town of Newburgh sewer system. He said there have been negotiations resulting in about a 12-page document which is a private sewer line and maintenance agreement that he has been asked to review twice. He said he's gone through and made some suggestions that have been incorporated into that agreement and so if they vote to approve this tonight they will also need to vote for a variance or an exception from their requirement that they must have a letter of connectivity for a public sewer system. He said in order to protect the county as part of that agreement they have joined with Boonville and they are now the beneficiary parties, the Warrick County Area Planning Commission and the Town of Newburgh are beneficiaries of an indemnification agreement in which the developers have agreed to hold us harmless in entirety as a consequence of any problems what-so-ever with the use of the private sewer in fines, penalties, costs, etc. He said so they think they are adequately protected, they are using this joint public, private partnership sewer project to approve this project. He said we are standing on the same footing as the Town of Newburgh is and he recommends its approval. He said the documents that have been sent to Sherri today can be executed in multiple parts...it has been executed by the principle parties and the indemnification agreement because of the geographical distance between the parties has been executed in two parts. He said Newburgh has not yet signed it, maybe they did today but our copy is not signed and this would be where our fearless leader would sign it on behalf of the APC if it's approved tonight.

Mrs. Rector said when this subdivision was done, when the K-Mart was done there, it was approved with this private sewer system back in the 80's.

The President asked if we had any other developments like that.

Mrs. Rector said back years ago you had Newburgh Sewer and you had Jebco which Jim owned.

Jim Biggerstaff said the sewer system is maintained by Jebco and it was a private agreement between Jebco and Newburgh Sewer and they have to honor all of those contractual arrangements; it's a recorded document.

Attorney Doll said their neighborhood that he lives in started out as a private sewer system.

Jim Biggerstaff said they really weren't private; they were built under the inspection of the Town of Newburgh.

Mrs. Rector said so the plat would be conditioned upon the Variance on the requirement of the letter of connectivity and then entering Newburgh...she said this is the one you sent me so Newburgh has not signed it yet.

Tom said it is his understanding that Chris is trying to get their signatures but they were not available today and he would get them in the coming days.

Attorney Doll said it was his understanding that is has been approved.

Tom said it has been approved yes.

The President asked if the motion should be contingent upon their approval.

Attorney Doll said his suggestion is that they approve it today and if they want to make it contingent upon Newburgh also approving it, that is prudent. He said or you could execute it tonight and ask Sherri to hold it until it's been verified.

Mrs. Rector asked if they wanted to get the originals from Don Fuchs to record.

Ms. Kasha said between Don and herself the originals would be coming shortly. She said they are coming from Illinois and New Jersey and...

Attorney Doll asked if they were asking for it to be approved subject to you bringing the originals in for Guy's signature.

Ms. Kasha said before recording, yes.

Mrs. Rector asked if we have all of the return receipts.

Molly Barnhill said yes.

Mrs. Rector said it is also subject to the public utility being vacated because otherwise we would be giving a permit for a building on top of an easement and we can't do that.

Tom said the vacation has been filed and we will be going before the County Commissioners on May 29th.

Ascertaining no questions from the Board and no remonstrators present the President called for a motion.

Doris Horn made a motion to approved PP-18-05 with a waiver that they must have a letter to connect to the sewer system and an agreement approved between Newburgh Sewer and APC; the

easement shall be designed and built to the same standards as private streets as described in the Subdivision Control Ordinance; and the vacation of the easement. The motion was seconded by Amanda Mosiman and unanimously carried.

PP-18-06 – Lexington Subdivision No. 2 by Mohammed Nurahmed 6.08 acres being Lot 76 in the Replat of Lot 76 in Lexington Subdivision, located on the S side of St. Claire Dr. approximately 180' E of the intersection formed by Ashford Dr. & St. Clare Dr. Ohio Twp.

Jim Biggerstaff was present.

The President called for a staff report.

Mrs. Rector stated we have all of the return receipts with the exception of 1 for Lexington Brownstone Condominium Association. She said this was mailed to the wrong address but we have a waiver signed by C. Larry Rhodes, Lexington Brownstone Condominium Association. She said the property is zoned R-2B. She said part of it is in an X and part of it is in an AE floodplain, which is shown on the plat. She said it is a proposed 2 lot subdivision. She said the Commissioners approved no improvements to St. Clare Drive. She said the bank has surety posted for street once they took it over from Mr. Miller. She said the Drainage Board has ruled that no additional drainage plans were required. She said the Town of Newburgh has capacity for sewer. She said Indiana American has water lines in place with sufficient capacity. She said it is a 2 lot subdivision and Mr. Biggerstaff has a recorded Power of Attorney to represent the owner who is a doctor and had to go out of town.

Ascertaining no questions from the Board and no remonstrators present the President called for a motion.

Amanda Mosiman made a motion to approve PP-18-06. The motion was seconded by Doris Horn and unanimously carried.

OTHER BUSINESS: None

ATTORNEY BUSINESS:

Attorney Doll said Sherri had asked him to follow something in the General Assembly, there was going to be a change in the law according to what he understood and he was right. He said the legislature has now waded into the area of short term rentals, Airbnb vacation rentals by owners, etc. He said they have passed a preemption. He said if in fact Public Law 73 it says if you want to rent your primary residence, the residence that is your principle home as opposed to a second home or rental property, a primary rental for short term rental which is 30 days or less, we are precluded from disallowing that in any way shape or form however, if it is not your primary

residence, it is something you bought for the purpose of others on short term notice, there are six requirements that we may impose on that rental property. He said there is an initial fee and all kinds of other things so he's passed it out for their edification. He they have received some inquiries from neighbors who don't like strangers in their neighborhood coming and going and the legislature preempted us from stopping that. He said he'd be happy to answer any questions.

Bob Johnson asked what happens with the innkeeper's tax on that.

Attorney Doll said he didn't know but it would seem to him that they would have to apply it or else the innkeepers tax is arbitrary and capricious against hotels so they are going to have to figure out a way to track these and he thinks Airbnb tracks the innkeepers tax.

Bob Johnson said Airbnb does but not all of them do.

Attorney Doll said but he knows Airbnb made the representation that they would collect the tax and remit to state therefor local. He said but apparently there are some rentals in Warrick County on the internet records.

Mrs. Rector said so basically is has to be your residence; she can't buy the house next door and rent it out for that; then it would fall underneath these other things so we probably need to look at this and our ordinance to see if we need to change some things.

The President asked if he was reading the end of it correct; that if they had adopted something prior to January they still would have overrode that.

Attorney Doll said yes you are; Federal preempts Indiana and Indiana preempts local ordinances.

Mrs. Rector said so I think we are going to have to look at our definitions.

Attorney Doll said it's a may provision; maybe the county doesn't want to look into this but if they do, and it's not the owner's primary residence, we have six options of how we could regulate it if we wish. He added it is called Public Law 73, the governor signed it on March 14th.

EXECUTIVE DIRECTOR BUSINESS:

Discussion: Deemer & Johnston property (*continued from August 14, 2017, November 13, 2017, and February 12, 2018*).

Mrs. Rector said on the Deemer Johnston property, the one where Cabinets and Counters is located, they split it up and didn't leave themselves any access and they wanted sign permits

which we wouldn't give them because it was illegally subdivided; well it's going through a divorce, Morrie wrote them a letter to tell them they needed to come into compliance, and she spoke with Mrs. Johnson who is part owner told her she was going to come to site review in April and she did not. She said she has discussed this with Morrie and there is property all over Warrick County that has been illegally subdivided. She said we would be here every night all night long if we are going to go after everybody who has illegally subdivided a piece of property. She said they hurt themselves, they cannot expand or sell it. She said we had a title company call us about it the other day. She said maybe they could have Morrie send them another letter that states it has been the Boards decision that they are in violation and no permits or improvements shall be made until such time that they come into compliance; or something like that. She said they are only hurting themselves by not doing it.

The President said we don't have to even send them that do we.

Mrs. Rector said no we really don't.

Attorney Doll said at some point in time it will rear its ugly head.

Mrs. Rector said she thought writing a letter would close out the file.

Doris Horn made a motion to have the Attorney write the Johnsons a letter explaining what they need to do. The motion was seconded by Amanda Mosiman and unanimously carried.

Discussion: Primary Plat approvals with conditions (*continued from October 10, 2017, November 13, 2017, December 11, 2017, and February 12, 2018*).

Mrs. Rector said she has not had time to get together with Morrie so she would like to drop this from the agenda until they do.

Doris Horn made a motion to remove this item from the agenda. The motion was seconded by Bob Johnson and unanimously carried.

OTHER BUSINESS:

Mrs. Rector said the only other thing she has is that Sheila will be retiring June 8th and they will be having a little reception for her so she will send it out to them. She said it will be that day from 1-3. She said she has 4 weeks of sick time coming and 5 weeks of vacation so she has to turn in an addition appropriation which is what you do when someone retires and they have the time because you don't have it in your budget and it had to be turned in by Wednesday so she turned it in to. She said she just wanted them to know if they see it on the agenda. She said so she will be moving the girls on up and then Jamie that worked there before will be coming back the first of August to fill the empty spot, the Planner III.

Upon a motion by Amanda Mosiman, seconded by Doris Horn and unanimously carried the meeting adjourned at 6:40.

Guy Gentry, President

ATTEST:

Sherri Rector, Executive Director